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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 230.

ROLAND WORTHINGTON, COLLECTOR OF CUSTOMS FOR THE REVENUE DISTRICT OF BOSTON AND CHARLESTOWN, PLAINTIFF IN ERROR,

vs.

R. E. ROBBINS, H. A. ROBBINS, F. R. APPLETON, D. F. APPLETON, AND E. C. FITCH, COPARTNERS AS ROBBINS, APPLETON & CO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 14, 1887.

We submit, in conclusion, that the appeal should be dismissed, or that the decree appealed from should be affirmed.

S. D. McCARTHY

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50 Wall St.,
New York.

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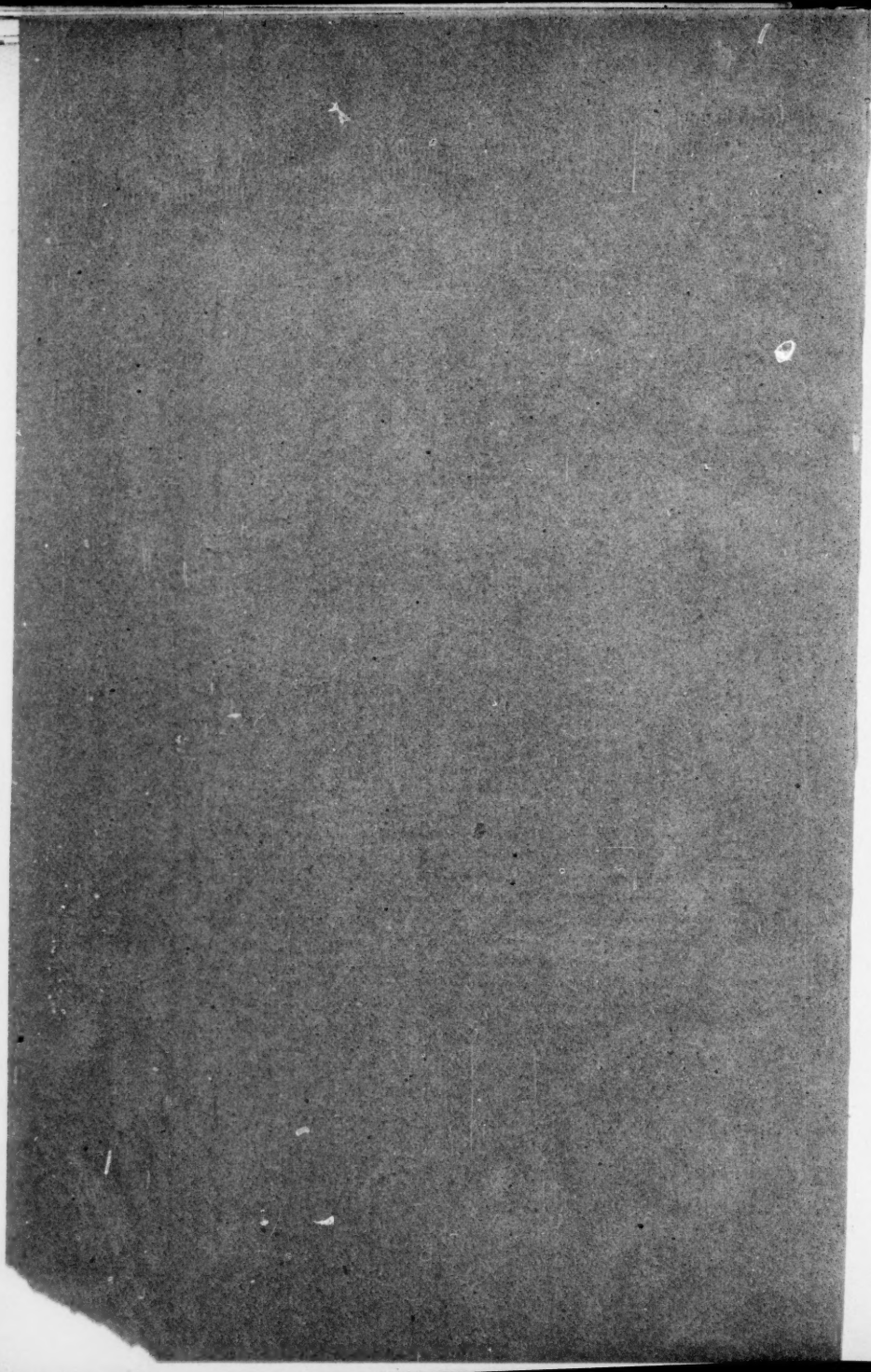

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between R. E. Robbins, of Boston, in the district of Massachusetts, H. A. Robbins and F. R. Appleton, both of New York City, D. F. Appleton, of Ipswich, and E. C. Fitch, of Waltham, both in said district, copartners under the style of Robbins, Appleton & Co., having a usual place of business at said Boston, plaintiff, and Roland Worthington, collector of the customs for the revenue district of Boston and Charlestown, defendant, in an action of contract a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and eighty-six.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by

LE BARON B. COLT,
U. S. Circuit Judge.

2 CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts, ss.:

And now, here, the judges of the circuit court of the United States, in and for the district of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof, I John G. Stetson, clerk of said circuit court of the United States, in and for the district of Massachusetts, have hereto set my hand and the seal of said court this tenth day of September, A. D. 1887.

[SEAL.] JOHN G. STETSON,
Clerk.

3 UNITED STATES OF AMERICA,
Massachusetts District, ss.:

At a circuit court of the United States for the first circuit begun and holden at Boston within and for the district of Massachusetts, on Friday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and eighty-six, before the honorable Le Baron B. Colt, circuit judge. No. 2347. R. E. Robbins, of Boston, in said district, H. A. Robbins and F. R. Appleton, both of New York City, D. F. Appleton, of Ipswich, and E. C. Fitch, both in said district, copartners under the style of Robbins, Appleton & Company, having a usual place of business at said Boston, plaintiffs, v. Roland Worthington, collector of the customs for the revenue district of Boston and Charlestown, defendant, in an action of contract.

Plaintiffs' declaration. (Filed Oct. 27, 1884.)

1st count. And the plaintiffs say the defendant owes them one hundred twenty-three dollars, according to the account hereto annexed.

4 (Account annexed.)

BOSTON, *Aug.* 25, '84.

R. Worthington, collector, to Messrs. Robbins, Appleton & Co., Dr.

(1) Mch. 21, '84. To excess of duty paid on 500 lbs. white enamel, entered per steamer Marathon, Mch. 21, '84 ..... $47.45
(2) May 12, '84. To excess of duty paid on 500 lbs. white enamel, entered per steamer Samaria, May 12, '84 ..... 75.55

Second count. And also for that on the day of the purchase of this writ, the said defendant, being indebted to the plaintiffs in the sum of 123 dollars, demanded, exacted, and received of the plaintiffs by the defendant, then and now collector of the customs for the revenue district of Boston and Charlestown, under color of a law of the United States for the collection of duties on imports, and by the plaintiffs paid under protest, and before that time had and received by the defendant to the plaintiffs' use, in consideration thereof promised to pay the plaintiffs when he should be thereto afterwards requested; yet said defendant has not paid the same or any part thereof, though often requested.

To the damage of the said plaintiffs, as they say, the sum of one thousand dollars.

The writ in this cause is dated the twenty-fifth day of August, A. D. 1884, and was duly entered at the October term of this court, A. D. 1884, when and where the parties appeared by their respective attorneys.

5 On the seventh day of November, A. D. 1884, the following answer was filed:

Answer. (Filed Nov. 7, 1884.)

And now comes the defendant in the above-entitled action and for answer denies each and every allegation in the plaintiffs' writ and declaration contained.

By his attorney,

GEORGE P. SANGER,
U. S. Attorney.

This cause was thence continued from term to term to the May term, A. D. 1886, when the following statement of agreed facts was filed:

Statement of agreed facts. (Filed June 9, 1886.)

The plaintiffs imported from a foreign country into the United States, to wit, into the port of Boston, in the district of Massachusetts, in the months of March and May, 1884, two lots of white hard enamel in the steamships Marathon and Samaria from Liverpool, and made entries of the same at the custom-house in said Boston for consumption.

The defendant, as collector of customs at said port, assessed, liquidated, and exacted duties upon this enamel at the rate of 25% ad valorem as "watch materials not specially enumerated or provided for." Plaintiffs duly protested to the defendant against the exaction of such rate of duty, and claimed that the lawful duty due upon this enamel was 20% ad valorem as an article "manufactured in whole or in part not herein enumerated or provided for." A copy of the protest is annexed and made a part hereof.

6 Plaintiffs duly appealed to the Secretary of the Treasury, who sustained the defendant in his action. In due time and form plaintiffs instituted this action for the recovery of duties paid in excess of 20% ad valorem.

It is agreed that the merchandise is and was in 1883 known and described in trade as "white hard enamel;" that it is used for various purposes, including the making of faces or surfaces of watch-dials, scale columns of thermometers, faces or surfaces of steam-gauge dials, and for other purposes when a smooth or enameled surface is desired.

It is further agreed that the form or condition of this merchandise as imported affords no evidence or indication of the use to which it is to be applied. It is further agreed that this merchandise in the form or condition as imported can not be used for any of the purposes above described, nor for any purposes whatever of practical use to which it is adapted or ever applied; that before it can be applied to any practical use its present form and condition must be changed by grinding or pulverizing and new processes of manufacture applied.

It is further agreed, if it would be competent to prove the same, that the plaintiffs are and have been for several years prior to said importations, manufacturers of watches; that the enamel in controversy was imported by them for use in making watch-dials, and was in fact so used.

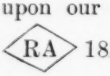
If the court shall be of the opinion that the duty lawfully chargeable upon this merchandise was 20% ad valorem, the judgment shall
7 be for the plaintiffs for the excess exacted, to be ascertained by an assessor, with interest and costs. On the contrary, if the court shall be of the opinion that the duty exacted was that lawfully due, then judgment shall be for the defendant for costs.

J. P. TUCKER,
Attorney for Plaintiffs.
GEORGE M. STEARNS,
U. S. Attorney for Defendant.

(Copy.)

BOSTON, *July* 3rd, 1884.

SIR: We respectfully protest against your decision, assessment, liquidation, and exaction of duties at the rate of twenty-five per cent. ad valorem upon our importation of three packages of white hard enamel marked



1822/4 in the steamship Samaria from Liverpool and entered for consumption on the 12th day of May last, claiming that under the existing laws of the United States this merchandise is liable only either to a duty of ten per cent. or twenty per cent. ad valorem.

This enamel is not enumerated by name in the tariff, therefore must be classed for duty purposes under some general term or description.

It bears no similitude to any named article in the tariff within the intent or provisions of section 2499 of the act of March 3, 1883, and can not be classed under that section.

It is a crude article, only useful for any purpose by the destruction of its present form and condition, and a complete process of manufacture,
8 and is provided for by section 2513 of said act of March 3, at a duty of ten per cent. ad valorem. Should it, however, be held that on account of its present condition it is a partially manufactured article, then it is provided for by said section 2513 at a duty of twenty per cent. ad valorem. It is not a part of a watch or watch material within the description and intent of the provisions of Schedule N of said act of March 3.

It is adapted to, can be, and is used for various purposes, and is not a part of any special article nor a material for any special article.

We submit, under compulsion, to get our goods, and shall hold you and the Government responsible.

Yours, very respectfully,
ROBBINS, APPLETON & CO.

To Hon. ROLAND WORTHINGTON,
Collector, etc., Boston.

This cause thereupon came on to be heard and was fully heard by the court.

On the twenty-second day of June, A. D. 1886, it was ordered by the court that judgment be ordered for the plaintiffs.

On the twenty-ninth day of June, A. D. 1886, the following order was entered:

Order appointing assessor. (June 29, 1886.)

It is ordered by the court that John M. Fiske, esq,, be and he hereby is appointed assessor in the above named action to assess the damages and make report thereof to the court as soon as may be.

By the court:

ALEX. H. TROWBRIDGE,
Deputy Clerk.

9 This cause was thence continued to this present October term, A. D. 1886, when the following report is filed:

Assessor's report. (Filed Oct. 16, 1886.)

In pursuance of the annexed order of the court in the above entitled action, I assess the damages at $52.23, as follows:

On the importation of plaintiffs per S. S. "Marathon" duties were paid March 21, '84, on two packages of enamel:

Value £95. 0s 0p. ($462) at 25%	$115. 50
Duties, as per judgment, at 20%	92. 40
Excess	23. 10
Interest at 6% on $23.10 from Mch. 21, '84 to June 22, '86	3. 12
	26. 22

On the importation of plaintiffs per S. S. "Samaria" duties were paid May 13, '84, on three packages of enamel:

Value £95, 0s. 0p. ($462) at 25%	$115. 50
Duties, as per judgment, at 20%	92. 40
Excess	23, 10
Interest at 6% on $23.10 from May 13, '84, to June 22, '86	2.92
	26. 02

JOHN M. FISKE, *Assessor.*

Fees $10.00.

On the twentieth day of October, A. D. 1886, the honorable Thomas L. Nelson, district judge, sitting, it is considered by the court, that the said R. E. Robbins, H. A. Robbins, F. R. Appleton and E. C. Fitch, plaintiffs, recover of the said Roland Worthington, defendant, the sum of fifty-three dollars and fourteen cents damages and their costs of
10 suit, taxed at thirty-four dollars and seventeen cents.

A true record.

Attest.

JOHN G. STETSON, *Clerk.*

11 Circuit court of the United States, district of Massachusetts.

No. 2347.—*R. E. Robbins et al.* v. *Roland Worthington, Collector.*

Assignment of errors. (Filed Oct. 20, 1886.)

And now comes the defendant after judgment ordered for the plaintiffs and assigns the following errors and prays that judgment rendered in said case be reversed.

Because the circuit court ruled upon the facts set out in the agreed statement of facts that the plaintiffs were entitled to recover and ordered judgment for the plaintiffs upon said facts; whereas it should have ruled the plaintiffs were not entitled to recover upon said facts and should not have ordered judgment for the plaintiffs.

GEORGE M. STEARNS,
Attorney for U. S.

12 UNITED STATES OF AMERICA, *Massachusetts District, ss:*

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record of said circuit court, in the cause entitled, R. E. Robbins et al., plaintiffs, v. Roland Worthington, defendant, lately determined in said circuit court, and of all proceedings therein and of the assignment of errors and prayer for reversal filed therein. In testimony whereof, I hereunto set my hand and affix the seal of said circuit court at Boston in said district this tenth day of September, in the year of our Lord one thousand eight hundred and eighty-seven and of the Independence of the United States the one hundred and twelfth.

[SEAL.] JOHN G. STETSON, *Clerk.*

13 THE UNITED STATTS OF AMERICA.

To R. E. Robbins, of Boston, in the district of Massachusetts; H. A. Robbins and F. R. Appleton, both of New York city; D. F. Appleton, of Ipwich, and C. C. Fitch, of Waltham, both in said district, co-partners under the style of Robbins, Appleton & Co., having a usual place of business at said Boston, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States within and for the district of Massachusetts, wherein Poland Worthington, collector of the customs for the revenue district of Boston and Charlestown, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Le Baron B. Colt, circuit judge of the United States for the first judicial circuit, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and eighty-seven.

LE BARON B. COLT,
U. S. Circuit Judge, First Judicial Circuit.

Due, sufficient, and legal service of the foregoing citation is acknowledged.

J. P. TUCKER,
Att'y for Defendants in Error.

14 (Indorsement on cover:) No. 230. Roland Worthington, collector for the revenue district of Boston and Charlestown, plaintiffs in error, vs. R. E. Robbins, H. A. Robbins, F. R. Appleton, D. F. Appleton, and E. C. Fitch, co-partners as Robbins, Appleton & Co. Massachusetts C. C. U. S. Filed October 14, 1887.

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Office Supreme Court U. S.
FILED,
MAR 14 1891
JAMES H. McKENNEY,
CLERK

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In the Supreme Court of the United States.

OCTOBER TERM, 1890.

ROLAND WORTHINGTON, COLLECTOR of customs for the revenue district of Boston and Charlestown, plaintiff in error.

vs.

R. E. ROBBINS, H. A. ROBBINS, F. R. Appleton, D. F. Appleton, and E. C. Fitch, copartners as Robbins, Appleton & Co.

No. 230.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR PLAINTIFF IN ERROR.

12 UNITED STATES OF AMERICA, *Massachusetts District, ss:*

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record of said circuit court, in the cause entitled, R. E. Robbins et al., plaintiffs, v. Roland Worthington, defendant, lately determined in said circuit court, and of all proceedings therein and of the assignment of errors and prayer for reversal filed therein. In testimony whereof, I hereunto set my hand and affix the seal of said circuit court at Boston in said district this tenth day of September, in the year of our Lord one thousand eight hundred and eighty-seven and of the Independence of the United States the one hundred and twelfth.

[SEAL.] JOHN G. STETSON, *Clerk.*

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Witness, the honorable Le Baron B. Colt, circuit judge of the United States for the first judicial circuit, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and eighty-seven.

LE BARON B. COLT,
U. S. Circuit Judge, First Judicial Circuit.

Due, sufficient, and legal service of the foregoing citation is acknowledged.

J. P. TUCKER,
Att'y for Defendants in Error.

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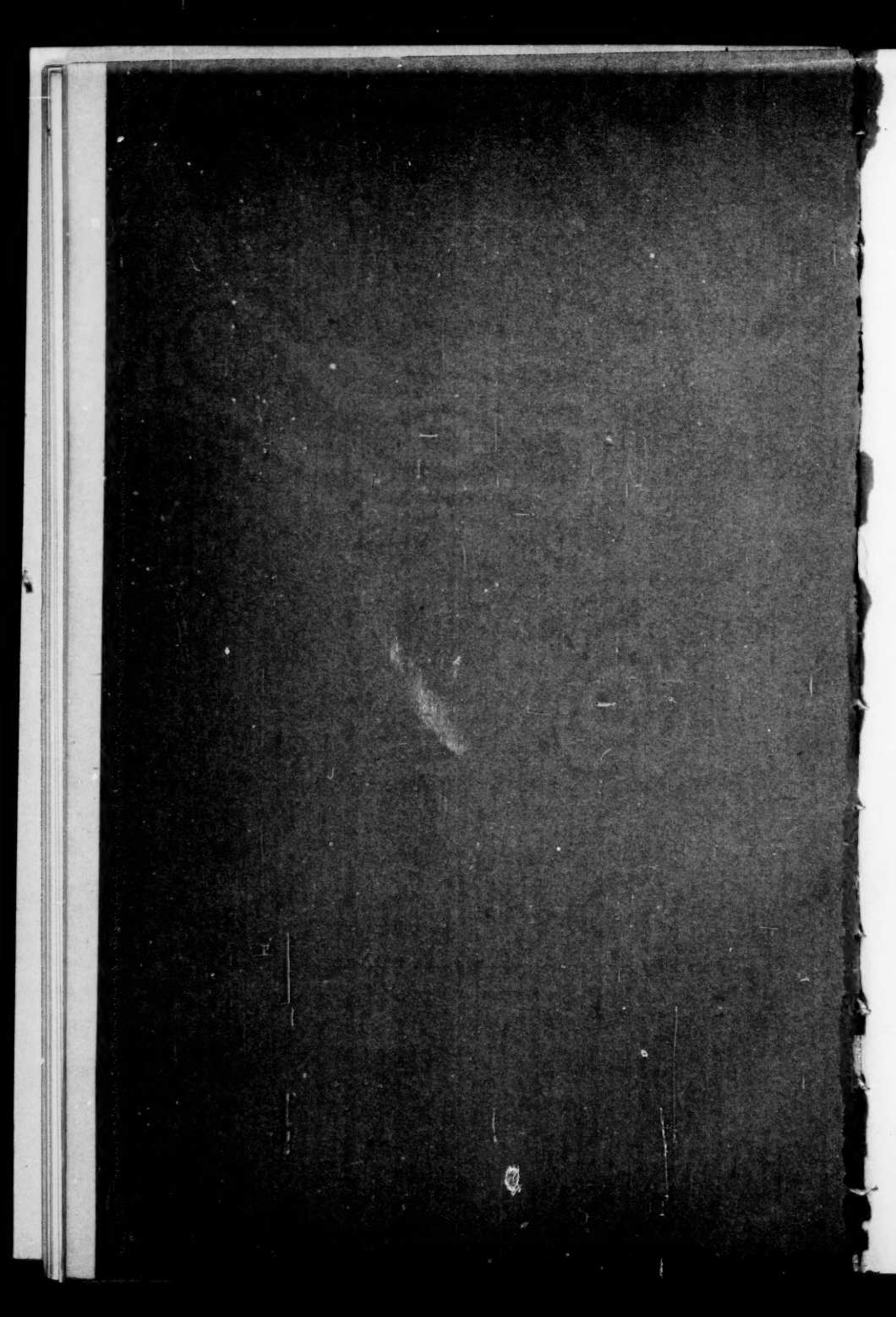

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No. 230.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This case is brought up from the circuit court of the United States for the district of Massachusetts by writ of error.

The amount of the judgment below is small, but it is understood that there are several other cases presenting in substance the same question.

The only question is as to the amount of duty that could be legally required to be paid in March and May, 1884, upon the importation of the material variously denominated "white enamel," "white hard enamel," "watch enamel," and "fusible enamel."

By the last paragraph of section 9 of the tariff act of June 30, 1864 (13 Stat., 211), a duty of 40 per cent. ad valorem is placed upon "all manufactures of glass, or of which glass shall be a component material, not otherwise provided for."

By act of July 14, 1870 (16 Stat., 264), the duty on 'watch materials" is placed at 25 per cent.

Under these enactments a decision was made by the Secretary of the Treasury (Syn., 1612) as follows:

(1612.)

White enamel—Duty on.

> White enamel, used for making the faces of watches, held to be dutiable under the provision of section 9, act June 30, 1864, for "manufactures of glass, or of which glass shall be a component material, not otherwise provided for," at the rate of 40 per cent. ad valorem, and not (as claimed) as watch materials, at a duty of 25 per cent. ad valorem. Being thus classified primarily for duty, the article is also entitled to 10 per cent. reduction of duty under section 2, act June 6, 1872. (Letter to collector, Boston, June 25, 1873, customs division.)

By the last clause of Schedule B, of the act of March 3, 1883 (22 Stat., 497), a duty of 45 per cent. is laid on unenumerated "manufactures of glass, or of which glass shall be the component material of chief value."

Section 2513 of the Revised Statutes, as constituted by said act of 1883 (22 Stat., 523), declares the duty on unmanufactured unenumerated articles to be 10 per cent.; and on unenumerated articles manufactured in whole or in part, 20 per cent.

Under these provisions the Secretary of the Treasury (Syn., 5896) decided as follows:

(5896.)

White enamel—Duty on.

TREASURY DEPARTMENT,
September 7, 1883.

SIR: This Department is in receipt of your letter, dated the 3d instant, transmitting the appeal (8034*h*) of Messrs. Robbins, Appleton & Co. from your decision assessing duty at the rate of 45 per cent. ad valorem on certain white enamel imported per steamer *Pavonia*, July 10 last, and claimed in the protest to be dutiable either at the rate of 10 per cent. or 20 per cent. ad valorem, as an unenumerated article, under section 2513, Revised Statutes.

Such enamel is a manufacture composed, according to the usual formula, of potash, arsenic, sand, broken glass, and manganese. It is in the piece, and can not be used as watch material or otherwise until its form shall be changed. According to an analysis of the particular merchandise in question, made at the instance of the importers, no glass, as such, was used in its manufacture, but the article itself is stated to be a kind of glass, and to be designated by the Germans as "Schmelzglas."

The Department decided, June 25, 1883 (Synopsis 1612,) that white enamel used for the making of faces of watches was dutiable under the provision

(T. I., old, 34) for "all manufactures of glass, or of which glass shall be a component material, not otherwise provided for," and this provision is reproduced in part in the existing tariff (T. I., new, 143), as follows: "All other manufactures of glass or of which glass shall be the component material of chief value." The article is covered by the provision, and section 2499, Revised Statutes; and the ruling specified should stand, except as to the rate of duty therein prescribed. Your decision is therefore affirmed.

Very respectfully,

JNO. C. NEW,
Acting Secretary.

COLLECTOR OF CUSTOMS, *Boston, Mass.*

January 22, 1884, the following decision was rendered in the circuit court of the United States for the northern district of Illinois in the case of the *Elgin Watch Company* v. *Spaulding, collector* (19 Fed. Rep., 411).

Customs duties—Watch enamel.

The substance known as "watch enamel" is dutiable under Schedule M, of section 2504, as "watch material," at 25 per cent. ad valorem, and not under Schedule B of the same section, at 40 per cent. as "manufactures of glass, or of which glass shall be a component material." Schedule B was intended to cover only manufactured articles of glass, and not the crude material.

At law.

Storck & Schumann, for plaintiff.

Gen. Joseph B. Leake, district attorney, for defendant.

BLODGETT, J. The plaintiff, about November 22, 1882, imported an article which was charged by the

inspector of customs a duty of 40 per cent. ad valorem under the last paragraph of Schedule B, § 2504, as "manufactures of glass, or of which glass shall be a component material." The plaintiff paid the duty so imposed under protest, and brings this suit to recover the excess of such duties, contending that the article in question is dutiable as "watch material" under the last paragraph but one of Schedule M, § 2504, at 25 per cent. ad valorem. The proof in the case shows that the article in question is known to the trade as "watch enamel," and used only, so far as is disclosed by the evidence, for enameling the faces or dials of watches.

The proof also shows that the composition of this commodity is a secret; that the component parts of it are not known in this country; that it is used by being pulverized and made into a paste which is spread upon the copper disk which forms the base of the watch dial and then baked and polished so as to bring it to a proper surface; and the proof fails to show that it is practically applied to any other use than for enameling watch dials, although it is suggested that it is adapted to use as an enamel for clock faces, and perhaps might be used for scale columns in thermometers and similar instruments, and for other purposes, where a white enamel surface is desirable. I come, therefore, to the conclusion that the article in question was imported by the plaintiff solely for use as enamel for watches, and that this is the only purpose, for which it is at present imported by importers and used in this country, and the only use known for it to the trade. The appearance of the article would seem to indicate that it is a vitreous material, at least the fracture would indicate that, and it may have in its composition some of the material out of which glass is made; but it seems very palpable to me that it is not a *manufacture of* glass;

it is not even crude or raw glass, and I therefore conclude that it comes clearly within the description of "watch material." It is, therefore, in my estimation, "watch material," and not a manufacture of glass. It is plain, I think, that the last paragraph of Schedule B, "manufactures of glass, or of which glass is a component material," was intended to designate some manufactured article of glass, in form for use as such, and not crude or raw glass. It must be an article which was fitted and adapted at the time it was imported for some purpose or use, and did not require further manipulation in order to make it dutiable as a manufacture of glass.

Issue is found for the plaintiff.

February 15, 1884, the following decision (Syn. 6176) was made:

(6176.)

Watch enamel and sheet steel—duty on.

TREASURY DEPARTMENT,
February 15, 1884.

SIR: The Department is in receipt of your letter of the 2d instant, transmitting the findings of the United States circuit court for the northern district of Illinois in the case of the Elgin National Watch Company *vs.* Jesse Spaulding, which were brought (two of them, Nos. 276 and 360) for the recovery of excessive duties on certain importations of watch enamel and (two others, Nos. 277 and 440) sheet steel (clock-spring steel).

The watch enamel was charged with duty at the rate of 40 per cent. ad valorum by the defendant (collector of customs), as a manufacture in part of glass (under synopsis 1612), but the plaintiffs claimed, and the court also finds, that the article was

in fact watch material, and is dutiable at the rate of 25 per cent. ad valorem, under the provision in Schedule M. (T. I., old 533), for "watch materials." * * *

The United States attorney at Chicago, in reporting the trials of these cases, states that the findings of the court were in accordance with the law and facts, and recommends that the decisions be acquiesced in, and the United States Attorney-General certifies that no writs of error will be sued out in any of the suits.

The Department, therefore, acquiesces in the said findings of the court, and directs you, upon judgments being duly entered of record, in accordance therewith, and the filing of certificates of probable cause, to take the necessary steps for the settlement, by forwarding certified statements for the consideration and action of the Department.

Hereafter you will cause your practice to conform to such findings by classifying watch enamel as watch "materials," at a duty of 25 per cent. ad valorem, under Schedule M (T. I., new, 494). * * *

Very respectfully,

H. F. FRENCH,
Assistant Secretary.

COLLECTOR OF CUSTOMS,
Chicago, Ill.

By paragraph 122 of the tariff law of 1890 (Stat., 573) the material under consideration is classified with glass manufactures and made subject to a duty of 45 per cent. as "fusible enamel."

The protest in the case at bar (Rec., p. 4) states as follows:

> This enamel is not enumerated by name in the tariff, therefore must be classed for duty purposes under some general term or description.

It bears no similitude to any named article in the tariff within the intent or provisions of section 2499 of the act of March 3, 1883, and can not be classed under that section.

It is a crude article, only useful for any purpose by the destruction of its present form and condition, and a complete process of manufacture, and is provided for by section 2513 of said act of March 3 at a duty of 10 per cent. ad valorem. Should it, however, be held that on account of its present condition it is a partially manufactured article, then it is provided for by said section 2513 at a duty of 20 per cent. ad valorem. It is not a part of a watch or watch material within the description and intent of the provisions of Schedule N of said act of March 3.

It is adapted to, can be, and is used for various purposes, and is not a part of any special article nor a material for any special article.

We submit, under compulsion, to get our goods, and shall hold you and the Government responsible.

Yours, very respectfully,

ROBBINS, APPLETON & CO.

The following is the statement of facts, as agreed, for the purposes of this case (Rec., p. 3):

The plaintiffs imported from a foreign country into the United States, to wit, into the port of Boston, in the district of Massachusetts, in the months of March and May, 1884, two lots of white hard enamel in the steamships *Marathon* and *Samaria* from Liverpool, and made entries of the same at the custom-house, in said Boston, for consumption.

The defendant, as collector of customs at said port, assessed, liquidated, and exacted duties upon this enamel at the rate of 25 per cent. ad valorem as "watch materials not specially enumerated or pro-

vided for." Plaintiffs duly protested to the defendant against the exaction of such rate of duty, and claimed that the lawful duty due upon this enamel was 20 per cent. ad valorem as an article "manufactured in whole or in part not herein enumerated or provided for." A copy of the protest is annexed and made a part hereof.

Plaintiffs duly appealed to the Secretary of the Treasury, who sustained the defendant in his action. In due time and form plaintiffs instituted this action for the recovery of duties paid in excess of 20 per cent. ad valorem.

It is agreed that the merchandise is, and was in 1883, known and described in trade as "white hard enamel;" that it is used for various purposes, including the making of faces or surfaces of watch dials, scale columns of thermometers, faces or surfaces of steam-gauge dials, and for other purposes when a smooth or enameled surface is desired.

It is further agreed that the form or condition of this merchandise as imported affords no evidence or indication of the use to which it is to be applied. It is further agreed that this merchandise, in the form or condition as imported, can not be used for any of the purposes above described, nor for any purposes whatever of practical use to which it is adapted or ever applied; that before it can be applied to any practical use its present form and condition must be changed by grinding or pulverizing and new processes of manufacture applied.

It is further agreed, if it would be competent to prove the same, that the plaintiffs are, and have been for several years prior to said importations, manufacturers of watches; that the enamel in controversy was imported by them for use in making watch dials, and was in fact so used.

If the court shall be of the opinion that the duty lawfully chargeable upon this merchandise was 20 per cent. ad valorem, the judgment shall be for the plaintiffs for the excess exacted, to be ascertained by an assessor, with interest and costs. On the contrary, if the court shall be of the opinion that the duty exacted was that lawfully due, then judgment shall be for the defendant for costs.

J. P. TUCKER,
Attorney for Plaintiffs.
GEORGE M. STEARNS,
U. S. Attorney, for Defendant.

Upon this "statement of agreed facts" the court below held the enamel, as imported, to be an unenumerated article manufactured in whole or in part, and held that the same was not dutiable as "watch materials."

ASSIGNMENTS OF ERROR.

(1) The court erred in ordering judgment for the plaintiffs below for $53.14 damages and for costs. (Rec., p. 5.)

(2) The court erred in holding the enamel imported to be subject to a duty of 20 per cent. ad valorem; and erred in not holding the same to be subject to duty at the rate of 25 per cent. ad valorem.

POINTS.

It is manifest from the decisions quoted that the importing watch manufacturers contended for and established the construction that the enamel in question should be classified as watch materials.

This conclusion was finally reached by the decision in the case of the *Elgin Watch Company* v. *Spaulding*, and was accepted and adopted by the Treasury Department.

Now the same interest contends that in this case the enamel is not to be classified as a watch material. It will be noted that the decision in *Elgin Watch Company* v. *Spaulding* was in January, 1884, and that the importations under consideration were in March and May of that year.

A.

The fact that the material may be used for some purposes other than in the manufacture of watches does not take these importations out of their class.

It is held in *Wedemeyer* v. *Lancaster* (31 Fed. Rep., 446) that small lamps, used mainly for lighting pipes and cigars, though they may be at times used for other purposes, are nevertheless to be classified as "smokers' articles."

B.

A claim that "watch materials" should be limited to parts of watches or to completed portions of watches would be unreasonable in this case.

The form and condition in which the enamel comes does not exclude it from the classification claimed by the Government; it is in condition to be applied in the only manner in which it can ever be used when it is imported.

Therefore, it must be regarded in the state in which it is imported as, to all intents and for all purposes, a manufactured and completed material.

The thing done to the enamel after its importation is in no sense a manufacture, or any process or act of manufacture thereof; it is merely an application.

The material, as such, is as perfect when imported as it

ever can be. The grinding, pulverizing, and fusing constitute the method of application.

When imported, the enamel is a "material" made, fitted, and adapted for use as fully as the nature of the article permits.

C.

In the clause next to the concluding one of the statement of agreed facts it is (omitting the first line as of no consequence) agreed:

> That the plaintiffs are, and have been for several years prior to said importations, manufacturers of watches; that the enamel in controversy was imported by them for use in making watch dials, and was in fact so used.

Thus it is admitted and agreed, for the purposes of this suit, that at purchase, on importation, when made the subject of protest, and in actual consumption, this enamel was watch material.

The inquiry may be addressed to the defendants in all seriousness, "If this was not watch material, what was it?"

The enamel was bought as, and was imported and intended for, and was used and employed as, watch material, and it is submitted that as to the plaintiff in error and the defendants in error it should be held accordingly.

It is respectfully submitted that the judgment of the court below should be reversed and a judgment rendered for the collector.

A. X. Parker,
Assistant Attorney-General.

Clerk Supreme Court U. S.
FILED,
MAR 12 1891
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 230.

ROLAND WORTHINGTON, COLLECTOR, ETC., *Plaintiff in Error*,

v.

R. E. ROBBINS ET AL.

In error to the Circuit Court of the United States for the District of Massachusetts.

BRIEF FOR DEFENDANTS IN ERROR.

The issue in this case is as to the rate of duty lawfully chargeable upon "white hard enamel," imported by the defendants in error into the port of Boston from Liverpool in 1884.

The facts were agreed, page 3, Record. Two provisions of law are involved in the issue. The defendant below, as Collector of Customs, exacted duties upon the imports at the rate of 25% ad valorem, under the provision in Schedule N, of the Act of March 3, 1883, which provides that rate of duty on "watch materials," while the plaintiffs below contended that the lawful classification of their imports was under the provision of Sec. 2513 of said act, that clause which provides for a duty of 20% ad valorem upon "all articles manufactured in whole or in part not herein enumerated or provided for." White hard enamel was not named in the law. After hearing, the Court below gave judgment for the plaintiff importers, page 4 of Record. This is contended as error by the plaintiff here.

ARGUMENT.

The agreed facts show the following:—

That the merchandise was known commercially as "White Hard Enamel."

That it is used for making the "surfaces or faces of watch dials, scale columns of thermometers, faces of steam guage dials, and other purposes, when a smooth or enamelled surface is desired."

That as imported it afforded no evidence or indication as to what its proposed use might be.

That as imported it was incapable of any practical use. New processes of manufacture are a necessity to adapt or apply it to any use.

The facts conclusively show the impossibility of a determination by customs officers from examination, what articles of use the imports were to become materials of. Neither law or treasury regulations recognize any means or method of ascertaining the dutiable classification of imports, except by examination of the import itself. It is upon foreign goods as imported that duties accrue, not as to what they may have been or what they thereafter may become. Upon such a standard only can the uniformity of impost duties directed by the constitution be secured.

The descriptive words, "watch materials," under which the defendant collector exacted the duty complained of, must, in order for an intelligent and lawful application, be construed as contemplating materials or articles of such a character, or in such form or condition of manufacture as to show when imported their exclusive adaptation to the making of watches. This has been the construction of the Treasury (although in this case it affirmed, upon appeal, the action of the collector). In Synopsis 5,943, of 1883, it was held that certain manufactures of brass and steel, if they presented

the form of a finished part of a watch, they should be classed as parts of watches, or watch materials, while, if they do not present such form, they were to be classed as manufactures of *metal*.

In Synopsis 8,862, of 1888, as to certain brass pins, reported by the U. S. appraiser "as pieces of brass wire, about $1\frac{7}{8}$ inches long, smaller at one end than at the other, used in the manufacture of rivets for watch cases, but could be and were used for various other purposes," it was held that they were *not* watch materials under the law.

So far as the ultimate use of these imports was concerned, the facts show them to have been to all intents and purposes, raw material. Would or could it be with reason contended, that a sheet of gold, silver, brass or steel could be legally classed as watch materials? Yet, upon the facts this white hard enamel afforded no more evidence that it was to become a component part in a watch than the sheets of metal would. As imports one was watch material as much as the other. Each and all might or might not be put to such use, dependent upon the needs and desire of the user and manufacturer in this country.

Congress has, in some instances, directed a rate of duty dependent upon the use of the article imported, but in no case of which I am aware, has use been the standard except the article in its described form, or in itself, bore plain ear marks of its specially adapted or proposed use.

In this case the statute defines no such standard.

The fact agreed ("upon condition if it be competent to prove it"), that these particular imports were used in the manufacture of watches, was, when considered with the other facts, clearly incompetent and immaterial; presumably so considered by the court below, by its direction of judgment for plaintiffs. Such fact applies not to the article as it came into the United States, but to what the manufacturer

here did with it. Argument would seem superfluous to show the complete chaos in the exaction of impost duties, resulting from the adoption of the standard of special use as applicable or controlling the classification of crude materials, when, as in this case, they have many and varied uses, neither of which appears, or is in any manner shown by the character or form, shape or condition of the import.

Presumably the plaintiff in error will call the attention of this court to the case of the Elgin Watch Company *v.* Spalding in the Circuit Court in Chicago, 19 Fed. Reporter, 411.

Although not so stated, it appears by the report of the case that it was tried to the court without a jury.

Apparently the subject matter was akin to that in the case at bar. The issue, however, presented to the court, and the facts found by it, as set forth in the opinion, are so widely different from both the issue and facts here involved, that its relevancy to the case at bar is not easily discoverable.

COMPARISON OF THE TWO CASES.

The Chicago Case.	*The Case at Bar.*
	AGREED FACTS, PAGE 3, RECORD.
Issue: whether the import was dutiable as *manufactures* of *glass* or as *watch material.*	Issue: Whether the imports were dutiable as *Watch Materials* or as *non-enumerated, partially manufactured articles.*
Known in trade as "Watch Enamel."	Known in trade as "*White Hard Enamel.*"
Used only so far as disclosed by the evidence for enamelling the faces of dials of watches. The proof fails to show that it is practically applied to any	Agreed that it is used for various purposes, for making surfaces or faces of watch dials, scale columns for thermometers, faces of steam gauges and other

other use than for enamelling watch faces.	purposes, when a smooth enamelled surface is desired.
A description is given in the opinion, of the manner of use, but, whether or not there was any ear mark upon the import to indicate its proposed use, does not appear.	Agreed, that the merchandise as imported, affords no evidence or indication of the use to which it is to be applied, and that in the form or condition as imported, it cannot be used for any practical purpose. Its form must be destroyed and new processes of manufacture applied.
As between "manufacturers of glass" and "watch materials," the Court decided it dutiable as watch material.	As between watch materials and non-enumerated, partially manufactured articles, the Court held the latter to be the correct classification.

That the Treasury accepted the decision in the Chicago case without appeal to this court, together with the presumption that it assumed, when affirming the action of the defendant collector in this case, that the subject matter of the two cases was the same, does not, it is respectfully suggested, affect in any manner the record in this case. *It is this record, and it alone*, which presents the case for the determination of this honorable Court. The judgment and conclusion of another tribunal upon a case, shown so utterly unlike in the issue and facts involved, affords no guide, and certainly no precedent for the determination of the case at bar.

That there is no error, and that the judgment of the Circuit Court should be affirmed, is respectfully submitted.

J P TUCKER,
Attorney for Defendants in Error.

Office Supreme Court U. S.
FILED.
MAR 19 1891
JAMES. H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 230.

ROLAND WORTHINGTON, COLLECTOR, ETC.,

Plaintiff in Error,

v.

R. E. ROBBINS ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

Supplemental Brief for the Defendants in Error.

Counsel for plaintiff in error, in his brief "Points" pages 10 and 11, says, "It is manifest, from the decisions quoted, that the importing watch manufacturers contended for and established the construction that the enamel in question shall be classified as watch material." Again, "now the same interest contends in this case the enamel is not to be classified as watch material."

On page 3 of his brief he quotes a decision of the Treasury, bearing date Sept. 7, 1883 (four months and more before the decision of the Court in the Chicago case), upon an appeal of the defendants in error in this case. In this Treasury decision it appears that the appellants claim in their protest the enamel to be dutiable at the rate of ten per cent or twenty per cent ad valorem. *There is no contention for watch material.* Most certainly the remarks of the learned counsel quoted cannot justly be applied to the defendants in error in this case.

J. P. TUCKER,

Atty. for Defendants in Error.